

# EMPLOYMENT AGREEMENT

The Employment Agreement ("Agreement") is made this 1 day of April, 2009, by and between the State University of New York at Stony Brook ("University") and Stephen Christopher Pikiell ("Employee").

## Article I – Purpose

The University and Employee have entered into this Agreement because the University desires to hire Employee for a period of five (5) years with the Employee's assurance that he will serve the entire term of this Agreement, a long-term commitment by Employee being critical to the University's desire to run a stable athletics program. University and Employee agree that head coaches of university intercollegiate athletic teams conduct their professional activities under unique circumstances, including evaluation and scrutiny of team performances by the public and the media; control by external rules and regulations, and the University's academic standards. These circumstances justify job security and commitment by Employee of longer than one year but less than a permanent appointment. For these reasons, the University has agreed to employ Employee and Employee has promised to be employed by the University on the following terms and conditions.

## Article II – Confidentiality

The terms and conditions of this Agreement shall be kept confidential, to the fullest extent permitted by law. Notwithstanding the foregoing, the Employee may disclose the terms and conditions of this Agreement to his legal, tax and financial advisors and to his immediate family.

## Article III – Position

### **3.01 Description of Employee's Responsibilities**

- a. **Recognition of Duties.** Employee agrees to devote his best efforts full time to the performance of his duties for the University, to give proper time and attention to furthering his responsibilities to the University and to comply with all rules, regulations, policies, and decisions established or issued by the University. Employee recognizes that his statements about the University and its administrators are often publicized and agrees to use his best efforts to keep positive and constructive in tone any public comments he makes. Employee also agrees that notwithstanding the provisions of Section 5.05, during the term of this Employment Agreement, he will not engage, directly or indirectly, in any business that would detract from his ability to perform his duties and responsibilities.
- b. **General Duties and Responsibilities of Employee.** During the period in which the University employs Employee as Head Coach of the University's intercollegiate Men's Basketball team, Employee agrees to undertake and perform properly, efficiently, to the best of his ability and consonant with the standards of the University, the duties and responsibilities attendant to the position of Head Coach of the University's Men's Basketball team as set forth in this Agreement. Employee further agrees to abide by and comply with the constitutions, bylaws and interpretations of the National Collegiate Athletic Association ("NCAA"), America East Conference ("America East Conference") (or any other athletic conference with which the University may become affiliated) and the University. Employee shall comply with all rules and regulations relating to the conduct and administration of the Men's Basketball program, including recruiting rules, as now constituted or as may be amended during the term hereof. If Employee becomes aware, or has reasonable cause to believe, that any violation of such constitutions, bylaws, interpretations, rules or regulations may have taken place, he shall report the same promptly to the University's Director of Athletics. Employee agrees to adhere to, respect and follow the academic standards and requirements of the University in the context of

recruiting and eligibility of prospective and current student-athletes for the Men's Basketball program. The University's academic standards, requirements and policies shall be observed by Employee and his staff members, including assistant coaches, at all times.

- c. **Specific Duties and Responsibilities While Employed as Coach.** As of the beginning of this Agreement, the duties and responsibilities assigned to Employee in connection with the position as Head Coach of the University's Men's Basketball program shall be reflected in the Employee's official performance program. Employee's performance program shall be reviewed by the Employee and his direct supervisor on an annual basis throughout the term this Agreement.

### **3.02 Employee May Be Disciplined for Violations of NCAA Rules and Regulations.**

If Employee is found to be in violation of material NCAA rules and regulations, while employed by the University, Employee shall be subject to disciplinary action as provided in Section 6.01 below. The University considers serious or deliberate NCAA violations to be serious misconduct. Any resulting disciplinary action shall be conducted under the provisions of Article 19 of the State of New York UUP collective bargaining agreement.

### **3.03 Reporting Relationship**

Employee shall report to the Director of Athletics and / or to such other person as may be designated by the Director of Athletics or the University President. Employee's immediate supervisor shall communicate the job duties and responsibilities as Head Coach of the Men's Basketball team to the Employee in the Employee's official performance program on an annual basis. In addition, Employee's performance shall be formally evaluated in writing by his immediate supervisor once each year during the term of this Agreement.

## **Article IV – Term of Employment**

Subject to the terms and conditions of Article VI hereof concerning termination, Employee's employment shall commence on April 1, 2009, and shall continue until this Agreement terminates on March 31, 2014. Neither party shall have any right to terminate this Agreement prior to March 31, 2014, except as provided herein.

## **Article V – Compensation**

In consideration for the unique commitments set forth in this Agreement, Employee shall be entitled to earn the following forms of compensation: basic annual salary; merit salary increases; fringe benefits and incentive bonuses. Consistent with NCAA legislation and New York State Public Officers Law requirements, Employee must notify the University's Director of Athletics and obtain prior approval for any non-University income opportunity. All payments from the University are subject to normal deductions and withholdings for state, local and federal taxes; for any retirement or other benefits to which the Employee is or may be entitled, as well as the terms and conditions of Article VI hereof concerning termination of this Agreement.

### **5.01 Basic Annual Salary.**

During the term of the Agreement, Employee shall receive the following basic remuneration:

- a. **Base salary.** The base salary paid by the University to Employee for satisfactory service and performance of the terms and conditions of this Agreement shall be \$153,499 per year, payable on a bimonthly basis. This base salary shall be increased by any salary increases negotiated by Employee's collective bargaining unit.

- b. **Supplemental Salary.** Employee acknowledges that he will be expected, and is willing, to play an integral role in the University's advancement and community relations effort. In consideration of such involvement, employee shall receive supplemental annual compensation of \$50,000 for fulfilling all external relation responsibilities reasonably requested by the Director of Athletics and/or University President, including, by way of example only, participation in electronic media, speaking appearances, marketing, sponsorship cultivation and representation, and fundraising activities. Employee's supplemental salary shall be combined with his base salary and payable on a biweekly basis.

#### **5.02 Discretionary Salary Increases Based on Periodic Evaluations.**

During the term of this Agreement, Employee shall also be eligible for discretionary salary increases.

- a. **Periodic Personal Evaluations.** Employee's performance of his job duties and responsibilities (separate and apart from incentive-based achievement) shall be evaluated by his reporting superior on an annual basis, using the standards and guidelines of performance evaluations applied to other employees of the Employee's classification within the University. These evaluations shall take into account past evaluations, as well as the expectations and performance goals set for Employee in the prior year. In addition, each year, members of the Men's Basketball team shall evaluate Employee on his effectiveness as Head Coach of the University's Men's Basketball program. This shall be a regular component of the annual personal evaluation conducted by the Employee's reporting supervisor.
- b. **Eligibility for Discretionary Salary Increase.** Employee shall be eligible for discretionary salary increases in accordance with the established policy of the current State of New York UUP collective bargaining agreement.

#### **5.03 Fringe Benefits.**

During the term of this Agreement, the University shall provide Employee with the fringe benefits described below.

- a. **Standard University Fringe Benefits.** Employee shall be entitled to the standard University fringe benefits appropriate to the Employee's classification. If any benefit is based in whole or in part on salary paid to the Employee, such benefit shall be based on Employee's basic annual salary.
- b. **Expenses.** The University shall reimburse Employee for all travel and out-of-pocket expenses reasonably incurred in connection with the performance of his duties under this Agreement, including but not limited to expenses incurred while recruiting. Such reimbursement shall be in accordance with the standard University procedures and Employee's presentation to the University of vouchers or other statements itemizing such expenses in reasonable detail.
- c. **Automobile.** The employee will be provided either a \$350.00/month vehicle allowance or a courtesy car at the discretion of the Director of Athletics (and University administration) to transact official duties under this Agreement, Employee shall be responsible for all insurance, maintenance and fees associated with ownership and use of said automobile, and for compliance with applicable University rules and regulations. The University shall reimburse the fuel expenses incurred by the Employee when operating this vehicle on official University business.

**5.04 Outside Income.**

During the term of this Agreement, while Employee is the Head Coach of the University's Men's Basketball team, Employee may earn outside income, subject, in each instance, to the prior written approval of the Director of Athletics, and the following terms and conditions:

- a. **General Provisions Concerning Outside Income.**
  - i. **Employee's Legal Obligation.** All outside activities shall be conducted in accordance with New York State Public Officer's Law requirements and with 8 NYCRR § 335.26 which states that "no employee may engage in other employment which interferes with the performance of the employee's professional obligation."
  - ii. **NCAA Rules Control.** In no event shall Employee accept or receive, directly or indirectly, any monies, benefit or any other gratuity whatsoever from any person, corporation, booster club, alumni association or other benefactor if such action would violate NCAA legislation or the constitution, bylaws, rules and regulations or interpretations of the NCAA and the America East Conference, as now or hereafter enacted. Changes in NCAA or America East Conference legislation, constitutions, bylaws, rules and regulations or interpretations thereof shall automatically apply to this Agreement without the necessity of a written modification.
  - iii. **University Is Not Liable.** Such activities are independent of Employee's University employment, and the University shall have no responsibility or liability for any claims arising therefrom. The Employee agrees to insert a clause in each outside income agreement stating that: "Neither the Stony Brook University nor the State of New York are liable for any of Employee's obligations under this agreement. Employee is not acting for or on behalf of Stony Brook University or the State of New York".
  - iv. **Employee Retains All Revenues.** Except for limitations on outside compensation established by or set forth in this Agreement, State law or the constitution, bylaws, rules and regulations and interpretations thereof of the University, the America East Conference or the NCAA, Employee shall be entitled to retain all revenue generated by such outside activities.
- b. **On-Campus Summer Camp or Clinic.** Subject to the University's revocable permit policy and procedures and such considerations as deemed necessary by Athletic administration, Employee may use University facilities to independently run a summer youth basketball camp under his name for up to three (3) weeks each summer. Employee may request the use of such facilities for more than three (3) weeks, which request may be granted by the University, in its discretion.
- c. **Shoe, Apparel and Equipment Contracts.** Subject to the provisions of this Section 5.04, Employee shall be entitled to retain monies or benefits specifically articulated for the University Men's Basketball program in agreements between shoe, apparel or equipment manufacturers or sellers and the University within the term of this Agreement. If required by those agreements, the University Men's Basketball team shall wear its shoes, apparel or equipment during practice and/or competition and Employee shall wear and/or consult with the manufacturer or seller concerning the design and/or marketing of such shoes, apparel or equipment, provided such agreements are in writing, pre-approved by the Director of Athletics, comply with University trademark and logo requirements and do not extend beyond the term of this Agreement.

d. **Disclosure of Outside Income.** The Employee shall report annually, in accordance with NCAA Bylaw 11.2.2 and New York State Public Officer Law requirements, in writing, to the President of the University through the Director of Athletics, on or before July 1 of each year, all athletically-related income from sources outside the University, including, but not limited to, income from sports camps, housing benefits, annuities, complimentary ticket sales, country club memberships, television and radio programs, equipment manufacturers or sellers. The University shall have access to all records of the Employee as necessary to verify such report.

#### **5. 05 Supplemental Incentive Compensation.**

Supplemental compensation paid to Employee by the University for incentive goals achieved during any period of this Agreement shall only occur with the written consent of the Director of Athletics. This consent shall be contingent on verification by the Employee's immediate supervisor that the Head Coach has satisfied the specific duties and responsibilities of the Head Coach of the Men's Basketball team outlined in this Agreement and his official performance program. Any supplemental compensation earned through the achievement of the goals set forth below shall be paid to the employee within the month of June following the completion of the Men's Basketball team's competitive season. Such supplemental compensation is in addition to the Employee's basic annual salary.

- Ten Thousand Dollars (\$10,000) in the event the team participates in the NCAA post-season championship tournament; and
- Ten Thousand Dollars (\$10,000) in the event the team wins one game in the NCAA post-season championship tournament; or
- Twenty-Five Thousand Dollars (\$25,000) in the event the team wins two games in the NCAA post-season championship tournament; or
- Fifty Thousand Dollars (\$50,000) in the event the team wins three games in the NCAA post-season championship tournament; or
- One Hundred Thousand Dollars (\$100,000) in the event the team wins four games in the NCAA post-season championship tournament.
- **Most Improved Team GPA.** During employment as Head Coach of the University's Men's Basketball team, Employee shall receive the following supplemental compensation for his contribution to the academic performance of the Men's Basketball team. In any year that the student-athletes on the University's official NCAA Squad List for the Men's Basketball team achieve the most improved cumulative grade point average of all the University's varsity teams during any regular academic semester, Employee shall receive supplemental compensation in the amount of \$1,000.
- **Victories Over Programs Ranked in the Top 25.** During employment as Head Coach of the University's Men's Basketball team, Employee shall receive the following supplemental compensation for his contribution to the exceptional athletic performance of the Men's Basketball team as reflected by the team's victories over programs with an RPI ranking in the top 25. In any year that the University's Men's Basketball team wins a regular season contest against a team ranked in the top 25 of the College RPI.com ranking at the end of week in which the game is played, Employee shall receive supplemental compensation in the amount of \$1,000.
- **Post-Season Men's National Invitation Tournament (NIT) At-Large Bids.** During employment as Head Coach of the University's Men's Basketball team, Employee shall receive the following

supplemental compensation for his contributions to the team's ability to receive an at-large bid to and subsequently advance in the Post-Season NIT. In any year that the University's Men's Basketball receives an at-large bid to the Post-Season NIT, Employee shall receive supplemental compensation in the amount of \$5,000. In any year that the University's Men's Basketball team wins a post-season NIT Tournament game, the Employee shall receive supplemental compensation in the amount of \$5,000 per victory.

- **Contest Guarantee Revenue.** During employment as Head Coach of the University's Men's Basketball team, Employee shall receive the following supplemental compensation for his contributions to the team's participating in contests which generate "guarantee" revenue for the Department of Athletics. It is expected that the Men's Basketball program bring in minimum revenue of \$100,000 annually to the Athletics Department by scheduling guarantee games. In any year that the University's Men's Basketball program receives guarantee revenue in excess of \$100,000, Employee shall receive supplemental compensation in the amount of fifty percent of the excess guarantee revenue, but not to exceed \$15,000 in total. The remaining excess guarantee revenue will be deposited in the men's basketball "Friends" account.

## Article VI – Termination

### 6.01 Termination by University

Circumstances may arise that require the University to terminate this Agreement prior to completion of its term. Any such action shall be governed by 8 NYCRR § 335.15, § 338 and Article 19 of the State of New York UUP collective bargaining agreement.

- a. **Automatic Termination upon Death or Disability of Employee.** This Agreement shall terminate automatically if Employee dies, or is discontinued from service in accordance with the provisions of the SUNY Group Disability Insurance Program. If this Agreement terminates because of the Employee's death, Employee's basic annual salary and all other benefits shall cease in accordance with the rules of the NYS Department of Audit and Control.
- b. **Termination through Formal Discipline.** The University shall have the right to seek termination of Employee's employment prior to its expiration on March 31, 2014. Such disciplinary action shall be in accordance with Article 19 of the State of New York - UUP collective bargaining agreement.
- c. **University's Obligations on Termination for Cause.** If this Agreement is terminated for cause, the University's obligation to pay annual compensation and any supplemental compensation shall cease immediately. Notwithstanding the foregoing, Employee shall be entitled to all annual compensation and benefits earned but unpaid as of the date of such termination. In no case shall the University be liable to Employee for the loss of any collateral business opportunity or any other benefit, perquisite or income resulting from activities such as, but not limited to, camps, clinics, media appearances, apparel or shoe contracts, consulting relationships or from any other sources.
- d. **Retrenchment.** Pursuant to 8 NYCRR § 335.15 (Article XI of the Policies of the State University of New York Board of Trustees), the University may elect to terminate this Agreement prior to its normal expiration.
- e. **Compensation upon Termination before End Date by University.** Except in cases of discipline or retrenchment, if the University terminates this Agreement prior to its normal expiration March 31, 2014, the University's sole obligation shall be to pay Employee's Base Annual Salary as defined in Section 5.01 for a period not to exceed the time remaining on the

Agreement. Employee agrees that his continued receipt of his Base Annual Salary, during the period after any termination by the University, is contingent upon his making reasonable and diligent efforts to obtain new employment. Payments to employee will be made in semi-annual installments as per the fiscal year ending June 30. Employee further agrees that should he find new employment, the University's responsibility under this section shall be to pay him the difference between the annual salary of his new position and his University Basic Annual Salary.

#### 6.02 Termination By Employee.

- a. **Permission to Contact.** If Employee is seeking employment at another institution of higher education or a professional basketball organization it is agreed that such institution or organization shall first request permission from the University's Director of Athletics to speak with the Employee. This permission will not be unreasonably withheld.
- b. **Liquidated Damages.** If Employee terminates this Agreement prior to March 31, 2014 to pursue coaching duties at the University of Connecticut as the Head Coach, Employee will pay the University \$250,000 in liquidated damages. If Employee terminates this Agreement prior to March 31, 2014 to pursue coaching duties at the University of Connecticut as an Associate Head Coach, Employee will pay the University \$150,000 in liquidated damages. If Employee terminates this Agreement prior to March 31, 2014 to pursue coaching duties at an institution with membership in a Bowl Championship Series (BCS) conference institution, George Washington University, or Hofstra University, Employee will pay the University \$175,000 in liquidated damages. If Employee terminates this Agreement prior to March 31, 2014 to pursue coaching duties at any other NCAA Division I conference institution, Employee will pay the University \$75,000 in liquidated damages. Any such payments shall be made to the University in semi-annual installments as per the fiscal year ending June 30. Additionally, if Employee terminates this agreement prior to March 31, 2014 to accept a head coaching position at another NCAA Division I institution, employer will agree to play Stony Brook University Men's Basketball with two games at Stony Brook University over the next immediate six years.
- c. **End of Compensation.** If Employee terminates this Agreement, all obligations of the University to pay basic annual compensation and supplemental compensation shall cease immediately. Notwithstanding the foregoing, Employee shall be entitled to all basic annual compensation earned but unpaid as of the date of such termination. In no case shall the University be liable to Employee for his loss of any collateral business opportunity or any other benefit, perquisite or income resulting from activities such as, but not limited to, camps, clinics, media appearances, apparel or shoe contracts, consulting relationships or from any other sources.

### Article VII – University's Educational Purpose

#### 7.01 Educational Mission

The parties understand and agree that, although this Agreement is sports-related, the purpose of the University and its legal arrangements – including this Agreement – is educational. The University's educational mission has precedence throughout this Agreement. Some examples of this priority are set forth below.

- a. **Student-athletes.** The parties recognize that a student-athlete may be declared not eligible for competition for academic reasons, because the University believes he would not be an appropriate representative of the University; as a disciplinary sanction under the University's student conduct code; because the University believes that he is not eligible according to the rules for athletic competition specified by the AMERICA EAST CONFERENCE or the NCAA, or for similar reasons. In no event shall such action by the University be considered a breach of this Agreement.

- b. Academic advisors. In determining whether a student-athlete is eligible for intercollegiate competition, it is recognized that the opinion of the student-athlete's academic advisor is important. Such academic advisor may recommend to the Athletic Director and the Faculty Athletics Representative that a student-athlete be declared academically ineligible when, in the advisor's judgment, such action is appropriate, even if the student-athlete is eligible under the rules referenced above in Section 7.01.a. Said recommendation shall be reviewed and approved by the Director of Athletics and the Faculty Athletics Representative.
- c. Academic Advisor. In furtherance of its educational purpose, as with all athletics programs, the University agrees to supply the Men's Basketball program with the services of an academic advisor, employed by the University, who shall be available to all student-athletes in the Men's Basketball program for tutoring, academic assistance and related matters.

## Article VIII – Miscellaneous

### **8.01 Employee Not Entitled to Permanent Appointment**

The parties understand and agree that Employee's employment under this Agreement in the position of Head Coach of the University's Men's Basketball team is not a tenure-track position, and shall not lead to permanent appointment.

### **8.02 Scheduling**

While the parties intend that Employee be involved to the greatest extent possible in arranging each season's Men's Basketball schedule for the University's Men's Basketball program and any rescheduling of games involving the University's Men's Basketball program, the University's Director of Athletics, or the Director's designee, shall have final authority and responsibility with regard to the Men's Basketball team's schedule, and shall use their best efforts to ensure that the team's schedule allows the Men's Basketball program to meet and maintain the University's objectives in all intercollegiate athletics. It is expected that the Men's Basketball program bring in minimum revenue of \$100,000 annually to the Athletics Department by scheduling guarantee games.

### **8.03 Judicial Remedies.**

The parties understand and agree that any disputes arising out of this Agreement concerning the provisions dealing with supplemental compensation and outside income shall be resolved by submission of such dispute to the New York State Court of Claims.

### **8.04 Requirement of University Signature and Approval**

This Agreement shall not be effective until signed by the University President.

### **8.05 Choice of Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

### **8.06 Compensation Conditional**

Payment of all forms of compensation set forth in this Agreement is subject to the approval of the annual operating budget by the University's governing body, and the sufficiency of appropriations or the availability of sufficient funds within the Athletics Department's budget to pay such compensation.

#### 8.07 University Retains All Materials and Records

All materials and documents, including, without limitation, personnel records, recruiting records, team information, films, statistics or any other material or data, furnished to Employee by the University, or developed by Employee on behalf of the University, at the University's direction, for the University's use or otherwise, in connection with the Employee's employment hereunder, are and shall remain the sole and confidential property of the University. Within five (5) days of the expiration of this Agreement or its earlier termination as provided herein, the Employee shall immediately cause any such materials in his possession or control to be delivered to the University.

#### 8.08 Government Immunity Not Waived

It is expressly agreed and understood between the parties that the University is an agency of the State of New York. Nothing contained herein shall be construed to constitute a waiver or relinquishment by the University of its rights to claim such exemptions, privileges and immunities as may be provided by law.

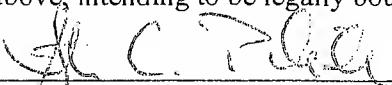
#### 8.09 Employee Shall Not Contact University Council Members, Officers or Trustees.

Although, from time to time, Employee may have social contact with the University Council members, University officers (Including the President, Provost and Vice Presidents) and members of the University's Board of Trustees at fund-raisers, media events, receptions or other social functions, Employee agrees to refrain from contacting directly any council member, officer or trustee of the University or otherwise engage in any direct communication with them about items relating to the Men's Basketball program or administration of the University's athletic program. All discussions of items of concern or problems with the Men's Basketball program or other athletic programs shall be handled in accordance with established administrative procedures.

#### 8.10 Severability

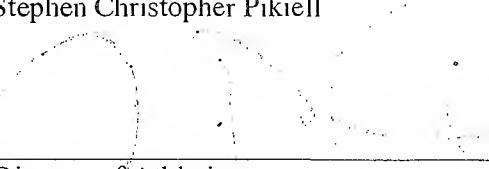
Should any paragraph or portion of this Agreement be found illegal or unenforceable to any extent or degree by any court of competent jurisdiction, that finding shall not affect the validity and enforceability of the remaining paragraphs hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above, intending to be legally bound by its provisions.

  
Employee Signature

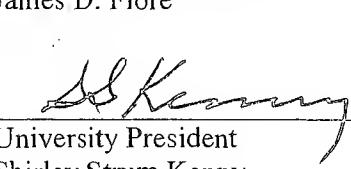
Stephen Christopher Pikiell

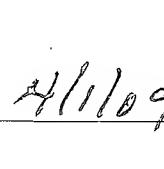
  
Date

  
Director of Athletics

James D. Fiore

  
Date

  
University President  
Shirley Strum Kenny

  
Date

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- b. **General Duties and Responsibilities of Employee.** During the period in which the University employs Employee as Head Coach of the University's intercollegiate Men's Basketball team, Employee agrees to undertake and perform properly, efficiently, to the best of his ability and consonant with the standards of the University, the duties and responsibilities attendant to the position of Head Coach of the University's Men's Basketball team as set forth in this Agreement. Employee further agrees to abide by and comply with the constitutions, bylaws and interpretations of the National Collegiate Athletic Association ("NCAA"), America East Conference ("America East Conference") (or any other athletic conference with which the University may become affiliated) and the University. Employee shall comply with all rules and regulations relating to the conduct and administration of the Men's Basketball program, including recruiting rules, as now constituted or as may be amended during the term hereof. If Employee becomes aware, or has reasonable cause to believe, that any violation of such constitutions, bylaws, interpretations, rules or regulations may have taken place, he shall report the same promptly to the University's Director of Athletics. Employee agrees to adhere to, respect and follow the academic standards and requirements of the University in the context of

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c. [REDACTED]

**5.04 Outside Income.**

During the term of this Agreement, while Employee is the Head Coach of the University's Men's Basketball team, Employee may earn outside income, subject, in each instance, to the prior written approval of the Director of Athletics, and the following terms and conditions:

a. General Provisions Concerning Outside Income.

- i. Employee's Legal Obligation. All outside activities shall be conducted in accordance with New York State Public Officer's Law requirements and with 8 NYCRR § 335.2(e) which states that "no employee may engage in other employment which interferes with the performance of the employee's professional obligation."
- ii. NCAA Rules Control. In no event shall Employee accept or receive, directly or indirectly, any monies, benefit or any other gratuity whatsoever from any person corporation, booster club, alumni association or other benefactor if such action would violate NCAA legislation or the constitution, bylaws, rules and regulations or interpretations of the NCAA and the America East Conference, as now or hereafter enacted. Changes in NCAA or America East Conference legislation, constitutions, bylaws, rules and regulations or interpretations thereof shall automatically apply to this Agreement without the necessity of a written modification.
- iii. University Is Not Liable. Such activities are independent of Employee's University employment, and the University shall have no responsibility or liability for any claim arising therefrom. The Employee agrees to insert a clause in each outside income agreement stating that: "Neither the Stony Brook University nor the State of New York are liable for any of Employee's obligations under this agreement. Employee is not acting for or on behalf of Stony Brook University or the State of New York".
- iv. Employee Retains All Revenues. Except for limitations on outside compensation established by or set forth in this Agreement, State law or the constitution, bylaws, rule and regulations and interpretations thereof of the University, the America East Conference or the NCAA, Employee shall be entitled to retain all revenue generated by such outside activities.

b. [REDACTED]

c. [REDACTED]

- d. **Disclosure of Outside Income.** The Employee shall report annually, in accordance with NCAA Bylaw 11.2.2 and New York State Public Officer Law requirements, in writing, to the President of the University through the Director of Athletics, on or before July 1 of each year, all athletically-related income from sources outside the University, including, but not limited to, income from sports camps, housing benefits, annuities, complimentary ticket sales, country club memberships, television and radio programs, equipment manufacturers or sellers. The University shall have access to all records of the Employee as necessary to verify such report.

#### **5.05 Supplemental Incentive Compensation.**

Supplemental compensation paid to Employee by the University for incentive goals achieved during any period of this Agreement shall only occur with the written consent of the Director of Athletics. This consent shall be contingent on verification by the Employee's immediate supervisor that the Head Coach has satisfied the specific duties and responsibilities of the Head Coach of the Men's Basketball team outlined in this Agreement and his official performance program. Any supplemental compensation earned through the achievement of the goals set forth below shall be paid to the employee within the month of June following the completion of the Men's Basketball team's competitive season. Such supplemental compensation is in addition to the Employee's basic annual salary.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Article VI – Termination

#### 6.01 Termination by University

Circumstances may arise that require the University to terminate this Agreement prior to completion of its term. Any such action shall be governed by 8 NYCRR § 335.15, § 338 and Article 19 of the State of New York UUP collective bargaining agreement.

- a. **Automatic Termination upon Death or Disability of Employee.** This Agreement shall terminate automatically if Employee dies, or is discontinued from service in accordance with the provisions of the SUNY Group Disability Insurance Program. If this Agreement terminates because of the Employee's death, Employee's basic annual salary and all other benefits shall cease in accordance with the rules of the NYS Department of Audit and Control.
- b. **Termination through Formal Discipline.** The University shall have the right to seek termination of Employee's employment prior to its expiration on March 31, 2014. Such disciplinary action shall be in accordance with Article 19 of the State of New York - UUP collective bargaining agreement.
- c. **University's Obligations on Termination for Cause.** If this Agreement is terminated for cause the University's obligation to pay annual compensation and any supplemental compensation shall cease immediately. Notwithstanding the foregoing, Employee shall be entitled to all annual compensation and benefits earned but unpaid as of the date of such termination. In no case shall the University be liable to Employee for the loss of any collateral business opportunity or any other benefit, perquisite or income resulting from activities such as, but not limited to, camps, clinics, media appearances, apparel or shoe contracts, consulting relationships or from any other sources.
- d. **Retrenchment.** Pursuant to 8 NYCRR § 335.15 (Article XI of the Policies of the State University of New York Board of Trustees), the University may elect to terminate this Agreement prior to its normal expiration.
- e. **Compensation upon Termination before End Date by University.** Except in cases of discipline or retrenchment, if the University terminates this Agreement prior to its normal expiration March 31, 2014, the University's sole obligation shall be to pay Employee's Bas Annual Salary as defined in Section 5.01 for a period not to exceed the time remaining on the

Agreement. Employee agrees that his continued receipt of his Base Annual Salary, during the period after any termination by the University, is contingent upon his making reasonable and diligent efforts to obtain new employment. Payments to employee will be made in semi-annual installments as per the fiscal year ending June 30. Employee further agrees that should he find new employment, the University's responsibility under this section shall be to pay him the difference between the annual salary of his new position and his University Basic Annual Salary.

#### 6.02 Termination By Employee.

- a. **Permission to Contact.** If Employee is seeking employment at another institution of higher education or a professional basketball organization it is agreed that such institution or organization shall first request permission from the University's Director of Athletics to speak with the Employee. This permission will not be unreasonably withheld.

b.



- c. **End of Compensation.** If Employee terminates this Agreement, all obligations of the University to pay basic annual compensation and supplemental compensation shall cease immediately. Notwithstanding the foregoing, Employee shall be entitled to all basic annual compensation earned but unpaid as of the date of such termination. In no case shall the University be liable to Employee for his loss of any collateral business opportunity or any other benefit, perquisite or income resulting from activities such as, but not limited to, camps, clinics, media appearance, apparel or shoe contracts, consulting relationships or from any other sources.

### Article VIII – University's Educational Purpose

#### 7.01 Educational Mission

The parties understand and agree that, although this Agreement is sports-related, the purpose of the University and its legal arrangements – including this Agreement – is educational. The University's educational mission has precedence throughout this Agreement. Some examples of this priority are set forth below.

- a. **Student-athletes.** The parties recognize that a student-athlete may be declared not eligible for competition for academic reasons, because the University believes he would not be an appropriate representative of the University; as a disciplinary sanction under the University's student conduct code; because the University believes that he is not eligible according to the rules for athlete competition specified by the AMERICA EAST CONFERENCE or the NCAA, or for similar reasons. In no event shall such action by the University be considered a breach of this Agreement.

- b. Academic advisors. In determining whether a student-athlete is eligible for intercollegiate competition, it is recognized that the opinion of the student-athlete's academic advisor is important. Such academic advisor may recommend to the Athletic Director and the Faculty Athletics Representative that a student-athlete be declared academically ineligible when, in the advisor's judgment, such action is appropriate, even if the student-athlete is eligible under the rules referenced above in Section 7.01.a. Said recommendation shall be reviewed and approved by the Director of Athletics and the Faculty Athletics Representative.
- c. Academic Advisor. In furtherance of its educational purpose, as with all athletics programs, the University agrees to supply the Men's Basketball program with the services of an academic advisor, employed by the University, who shall be available to all student-athletes in the Men's Basketball program for tutoring, academic assistance and related matters.

## Article VIII – Miscellaneous

### **8.01 Employee Not Entitled to Permanent Appointment**

The parties understand and agree that Employee's employment under this Agreement in the position of Head Coach of the University's Men's Basketball team is not a tenure-track position, and shall not lead to permanent appointment.

### **8.02 Scheduling**

While the parties intend that Employee be involved to the greatest extent possible in arranging each season's Men's Basketball schedule for the University's Men's Basketball program and any rescheduling of games involving the University's Men's Basketball program, the University's Director of Athletics, or the Director's designee, shall have final authority and responsibility with regard to the Men's Basketball team's schedule, and shall use their best efforts to ensure that the team's schedule allows the Men's Basketball program to meet and maintain the University's objectives in all intercollegiate athletics. It is expected that the Men's Basketball program bring in minimum revenue of \$100,000 annually to the Athletics Department by scheduling guarantee games.

### **8.03 Judicial Remedies.**

The parties understand and agree that any disputes arising out of this Agreement concerning the provisions dealing with supplemental compensation and outside income shall be resolved by submission of such dispute to the New York State Court of Claims.

### **8.04 Requirement of University Signature and Approval**

This Agreement shall not be effective until signed by the University President.

### **8.05 Choice of Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

### **8.06 Compensation Conditional**

Payment of all forms of compensation set forth in this Agreement is subject to the approval of the annual operating budget by the University's governing body, and the sufficiency of appropriations or the availability of sufficient funds within the Athletics Department's budget to pay such compensation.

#### 8.07 University Retains All Materials and Records

All materials and documents, including, without limitation, personnel records, recruiting records, team information, films, statistics or any other material or data, furnished to Employee by the University, or developed by Employee on behalf of the University, at the University's direction, for the University's use or otherwise, in connection with the Employee's employment hereunder, are and shall remain the sole and confidential property of the University. Within five (5) days of the expiration of this Agreement or its earlier termination as provided herein, the Employee shall immediately cause any such materials in his possession or control to be delivered to the University.

#### 8.08 Government Immunity Not Waived

It is expressly agreed and understood between the parties that the University is an agency of the State of New York. Nothing contained herein shall be construed to constitute a waiver or relinquishment by the University of its rights to claim such exemptions, privileges and immunities as may be provided by law.

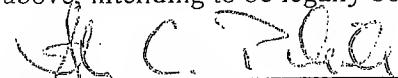
#### 8.09 Employee Shall Not Contact University Council Members, Officers or Trustees.

Although, from time to time, Employee may have social contact with the University Council members, University officers (Including the President, Provost and Vice Presidents) and members of the University's Board of Trustees at fund-raisers, media events, receptions or other social functions, Employee agrees to refrain from contacting directly any council member, officer or trustee of the University or otherwise engage in any direct communication with them about items relating to the Men's Basketball program or administration of the University's athletic program. All discussions of items of concern or problems with the Men's Basketball program or other athletic programs shall be handled in accordance with established administrative procedures.

#### 8.10 Severability

Should any paragraph or portion of this Agreement be found illegal or unenforceable to any extent or degree by any court of competent jurisdiction, that finding shall not affect the validity and enforceability of the remaining paragraphs hereof.

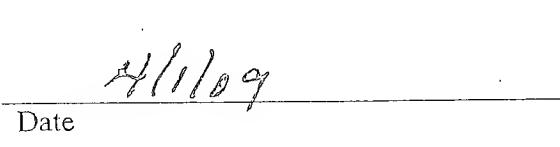
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above, intending to be legally bound by its provisions.



Employee Signature  
Stephen Christopher Pikiell



Date

  
\_\_\_\_\_  
Director of Athletics  
James D. Fiore  
\_\_\_\_\_  
Date  
\_\_\_\_\_  
University President  
Shirley Strum Kenny  
\_\_\_\_\_  
Date



Barbara W. Wall  
Vice President,  
Senior Associate  
General Counsel

February 24, 2012

**VIA E-MAIL AND U.S. MAIL**

Ms. Geraldine Gauthier  
FOIL Appeal Officer  
SUNY Plaza  
Albany, NY 12246

**Re: FOIL Appeal – Stony Brook University**

Dear Ms. Gauthier,

I represent USA TODAY, and I am writing to appeal a FOIL denial by the Stony Brook State University of New York. On January 24, 2012, USA TODAY editor Jodi Upton requested that the University provide copies of the current contracts for the school's men's and women's basketball coaches, Steve Pikiell and Beth O'Boyle. Upton also requested that the University provide copies of the outside income reports for the two coaches. Although the school's Records Access Officer Douglas Panico provided copies of the coaches' contracts, large portions of the records were redacted on the grounds that the information was "proprietary" under Public Officers Law §87(2)(d) (the "trade secret" exemption). Additionally, the school denied Upton's request for the coaches' outside income reports on the grounds that disclosure of the reports would constitute an "unwarranted invasion of personal privacy" under Public Officers Law § 87(2)(b) since disclosure "would result in economic or personal hardship to the subject party."

First, redaction of the coaches' contracts is not warranted because the redacted information does not constitute a "trade secret" under § 87(d)(2). By comparing the redacted coaches' contracts to an earlier, unredacted version from 2007 that the University previously disclosed, it is fairly evident that the redacted sections discuss the coaches' fringe benefits including use of an automobile, permission to use University facilities to independently run summer youth basketball camps, money received from the University's agreements with shoe, apparel or equipment manufacturers, and supplemental incentive compensation (e.g. bonus money if the team participates in the NCAA Tournament, if the coach is named Conference Coach of the Year, victories over teams ranked in the Top 25, etc.).

The University's contention that its coaches' salaries and fringe benefits constitute "trade secrets" is entirely without merit. A trade secret is "any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know how to use it." *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470 (1973). According to 104 N.Y. Jur 2d 234, there are six factors to consider in determining whether a trade secret exists: "(1) the extent to which the information is known outside the business; (2) the extent to which it is known by a business' employees and others involved in the business; (3) the extent of measures taken by a business to guard the secrecy of the information; (4) the value of the information to a business and to its competitors; (5) the amount of effort or money expended by a business in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. If there has been a voluntary disclosure by the plaintiff, or if the facts pertaining to the matter are a subject of general knowledge in the trade, then any property right has evaporated."

The trade secret exception is plainly not applicable to the salary and fringe benefits of a public employee. The redacted provisions are standard among college coaches' employment contracts, and Stony Brook has not guarded the "secret" because it disclosed similar prior coaches' contracts. Even if the information did constitute a trade secret, Stony Brook relinquished any property rights in the secret by releasing past coaches contracts to the public. Consequently, the information is not "proprietary" because disclosure of the information would not pose any risk of "substantial injury to the competitive position" of the coaches or the school.

In addition, records documenting the salary and benefits of public employees are presumptively open for public inspection. Section 87(3)(b) states that "each agency shall maintain a record setting forth the name, public office address, title and salary of every officer or employee of the agency." This provision unmistakably indicates that the public has a right to know how public employees are compensated. Moreover, New York courts and the Committee on Open Government have repeatedly stated that records containing the salary and benefits of public employees constitute public records under FOIL. See, e.g., *Doolan v. BOCES*, 422 N.Y.S. 2d 927 (1979) (holding that salary and fringe benefit data compiled by board of cooperative educational services as part of a subscription service for member school districts was not excepted from FOIL); *Gannett Co. v. County of Monroe*, 399 N.Y.S. 2d 534 (1977) (holding names, titles, and job salaries of county employees who had been terminated due to budget reductions are available under FOIL). For example, Committee on Open Government Executive Director Robert Freeman stated in an April 15, 2010 advisory opinion (FOIL-AO-18075) that employment contracts for employees assigned to a school district's central office were "clearly accessible and routinely disclosed under the Freedom of Information Law." Freeman wrote that as a general rule, "Records that are relevant to the performance of [public employees] official duties are available, for disclosure in such instances would result in a permissible rather than an unwarranted invasion of privacy." Similarly, in a March 17, 1995 advisory opinion, Freeman advised that records indicating teacher salaries and fringe benefits must be disclosed to the extent that they did not constitute an unwarranted invasion of privacy because:

"Payroll records . . . represent important fiscal as well as operation information. The identity of the employees and their salaries are vital statistics kept in the proper recordation of departmental functioning and are the primary sources of protection against employment favoritism. They are subject therefore to inspection." *March 17, 1995 Advisory Opinion* (quoting *Winston v. Mangan*, 338 N.Y.S. 2d 654, 664 (1972)).

In this case, incentive bonuses and money received from University contracts with equipment manufacturers constitute a portion of the coaches' salaries. Other benefits such as use of an automobile and ability to run summer youth camps are similarly part of the coaches' overall compensation packages. Moreover, the incentive bonuses and other provisions in question are certainly relevant to the performance of the coaches' duties. As a result, they must be made available for public inspection under FOIL.

The coaches' outside income reports should similarly be available for public inspection under FOIL. Coaches are contractually obligated to disclose athletically-related outside income to the University. Their contracts state, in relevant parts, that:

"Consistent with NCAA legislation and New York State Public Officers Law requirements, Employee must notify the University's Director of Athletics and obtain prior approval for any non-University income opportunity . . .

The Employee shall report, annually, in accordance with NCAA Bylaw 11.2.2 and New York State Public Officer Law requirements, in writing, to the President of the University through the Director of Athletics, on or before July 1 of each year, all athletically-related income from sources outside the University, including, but not limited to, income from sports camps, housing benefits, annuities, complementary ticket sales, country club memberships, television and radio programs, equipment manufacturers or sellers. The University shall have access to all records of the Employee as necessary to verify such report."

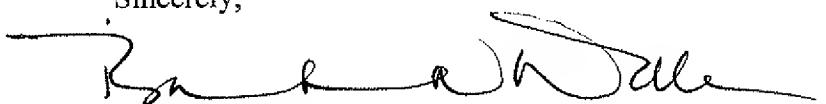
The University claimed that disclosure of these reports would constitute an "unwarranted invasion of personal privacy" under section 87(b)(2) on the grounds that it would "result in economic or personal hardship to the subject party." However, to constitute an "unwarranted invasion of privacy" under section 89(2)(b)(iv), in addition to resulting in economic or personal hardship, such information must not be "relevant to the work of the agency requesting or maintaining it." Unfortunately, Mr. Panico's denial letter does not explain the school's reasoning as to why it believes the coaches would suffer personal or economic hardship from disclosure of the outside income reports, nor does it state how the requested information is not relevant to the work of the University.

Disclosure of the requested records would not constitute an invasion of privacy. First, the outside income reports are not information of a "personal nature" because it only requires reports of "athletically-related income." Therefore, the reports only disclose income that is acquired by virtue of Pikiell and O'Boyle's positions as head basketball coaches at a state university. In reality, this athletically-related income may be considered part of the overall benefit package that accompanies such a prominent position. The public has a legitimate interest in the manner in which state college basketball coaches are compensated.

Second, even if release of the information would result in personal or economic hardship to the coaches, the language of the statute is conjunctive. *See Gannett Co.*, 399 N.Y.S. 2d 534 ("It is clear that both clauses must be applicable in order to make the paragraph operative and that when records are relevant to the ordinary work of the agency, those items . . . would be subject to disclosure"). Here, because the outside income reports are relevant to the school's work, they are subject to disclosure under FOIL. Indeed, the coaches' employment contracts state that NCAA bylaws and New York law *require* that the coaches disclose "all athletically-related income". The school must also grant its approval for any outside income opportunity, presumably so that it does not conflict with other University contracts, policies, and obligations. Because these outside income reports are relevant to the work of the University, they do not fall within the privacy exception specified in section 87(2)(b).

In sum, we respectfully appeal Stony Brook's denial of Ms. Upton's FOIL request. Please let me know if there is any additional information that we can provide.

Sincerely,



Barbara W. Wall



The State University  
of New York

Office of General Counsel

State University Plaza  
Albany, New York 12246

[www.suny.edu](http://www.suny.edu)

March 9, 2012

Barbara W. Wall, Esq.  
Vice President & Sr. Assoc. General Counsel  
Gannett Co., Inc.  
7950 Jones Branch Drive  
McLean, VA 22107

Re: Freedom of Information Law Appeal

Dear Ms. Wall:

I write in response to your appeal from the response to your Freedom of Information Law ("FOIL") request to Stony Brook University ("SBU") dated January 24, 2012. The subject of your appeal relates to the following requests for records:

The current contract for the head men's and women's basketball coaches (Steve Pikiell and Beth O'Boyle).

The most recent outside income report for the head men's and women's basketball coaches (Steve Pikiell and Beth O'Boyle).

The SBU Records Access Officer responded to your request on January 26, 2012, offering 37 pages of documents redacted to exclude proprietary information under Public Officers Law § 87(2)(d), and denying your request for outside income reports, on grounds that it would be an unwarranted invasion of personal privacy under Public Officers Law §87(2)(b).

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In your appeal dated February 24, 2012, you objected to the Records Access Officer's decision on the following grounds:

1. Redaction of coaches' contracts is not warranted because the redacted information does not constitute a "trade secret";
2. Records documenting salary and benefits of public employees are presumptively open for public inspection; and
3. Records documenting outside income of public employees are presumptively open for public inspection; and
4. SBU waived its right to redact or withhold the requested records by previously disclosure of coaches' 2007 contracts.

Public Officers Law § 87(2)(b)(d) permits an agency to withhold records which "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." The statute contains no definition of the term "trade secret." You offered definitions of "trade secrets" found in a 1973 U.S. Supreme Court decision and in New York Jurisprudence, a digest considered a secondary source of law in New York.

I am guided by the New York Court of Appeals, which has opined that a trade secret is information which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise." *Encore College Bookstores, Inc. v. Auxiliary Service Corp. of State University of New York at Farmingdale*, 87 N.Y.2d 410, 420 (1995). Here, the question is whether disclosure of the information would cause substantial injury to SBU's competitive position. To qualify for an exemption from disclosure under this section of Public Officers Law, the nondisclosing entity must show that it is subject to competition and that disclosure of such information would create a likelihood of substantial competitive injury. "Substantial competitive injury" is measured by the commercial value of the information to

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SBU's competitors, and the cost to its competitors to obtain the information. *Id.*

SBU is a university classified as "Division I" for National Collegiate Athletic Association competition. A list of Division I schools is available at [http://en.wikipedia.org/wiki/List\\_of\\_NCAA\\_Division\\_I\\_institutions](http://en.wikipedia.org/wiki/List_of_NCAA_Division_I_institutions). Based on my review of the above-cited list, I find 346 Division I institutions, distributed as follows: Alabama (9); Arizona (3); Arkansas (5); California (24); Colorado (5); Connecticut (7); Delaware (2); District of Columbia (4); Florida (13); Georgia (7); Hawaii (1); Idaho (3); Illinois (13); Indiana (10); Iowa (4); Kansas (3); Kentucky (7); Louisiana (11); Maine (1); Maryland (9); Massachusetts (6); Michigan (7); Minnesota (1); Mississippi (6); Missouri (5); Montana (2); Nebraska (3); Nevada (2); New Hampshire (2); New Jersey (8); New Mexico (2); New York (21, excluding SBU); North Carolina (18); North Dakota (2); Ohio (13); Oklahoma (4); Oregon (4); Pennsylvania (14); Rhode Island (4); South Carolina (12); South Dakota (2); Tennessee (12); Texas (21); Utah (6); Vermont (1); Virginia (14); Washington (5); West Virginia (2); Wisconsin (4); and Wyoming (1). In addition there are seven schools that have commenced the process to reclassify to Division I. By my count, SBU has 345 current competitors and a potential for an additional seven, for a total of 352 direct competitors. It is therefore reasonable to conclude that SBU has significant competition within its Division I collegiate athletic classification.

Having established the existence of competition, the next question is whether the information SBU seeks to protect from disclosure has any commercial value. My investigation into this matter yields a finding that SBU's athletics program is in constant, continuing competition with the other 345 Division I institutions for coaching talent.

Information on perquisites and other incentives identified in the coaching contract, but not paid with public dollars, is not widely available. An internet search reveals that members of the news media are in brisk competition with one another to report coaches' salaries, but the reports cite no single authoritative information source. For example, in a blog post entitled "Every D-1 Coaches'

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Salary for your Perusal," the author cited his sources as "CoachesHotSeat.com, gathered from contracts and media reports."<sup>1</sup> A November 2011 report by USA Today entitled "Salaries for College Football Coaches Back on Rise," cited "contracts or other documents showing compensation from 110 of the 120 schools in the NCAA's top-tier Football Bowl Subdivision" as its source of salary figures for the article.<sup>2</sup> Similarly, an October 14, 2011 Cleveland.com article entitled, "College Sports Teams Are Big Business, and Some Coaches Are Cashing In," cites "NCAA forms completed by the schools" as its information source.<sup>3</sup>

Based on the above, I am led to conclude that information on coaches' salaries and benefits has substantial commercial value, including to news media outlets, which must otherwise cobble together their stories based on numerous information sources. As noted above, this information is frequently challenged as to its accuracy. For example, an article in the Pittsburgh Post-Gazette reporting coaches' salaries acknowledged that the University of Pittsburgh "disputed the salary figures, releasing a statement saying the numbers 'did not originate with the university' and 'are not accurate.'"<sup>4</sup>

In my view, the information redacted from the records responsive to your FOIL request has substantial commercial value, both to the news media and to other Division I institutions, direct competitors of SBU. Disclosure of such information would enable SBU's 345 Division I competitor institutions to modify their employment agreements and/or to use such information in an attempt to lure SBU's coaching talent to their own institutions. This would cause substantial competitive injury to SBU, making it more difficult

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<sup>1</sup> Available at: [http://blog.al.com/chatter/2009/08/every\\_d1\\_coaches\\_salary\\_for\\_yo.html](http://blog.al.com/chatter/2009/08/every_d1_coaches_salary_for_yo.html) (last visited March 2, 2012).

<sup>2</sup> Available at: <http://www.usatoday.com/sports/college/football/story/2011-11-17/cover-college-football-coaches-salaries-rise/51242232/1>.

<sup>3</sup> Available at: [http://www.cleveland.com/datacentral/index.ssf?/2011/10/college\\_sports\\_teams\\_are\\_big\\_b.html](http://www.cleveland.com/datacentral/index.ssf?/2011/10/college_sports_teams_are_big_b.html).

<sup>4</sup> "College Coaches' Salaries Continue to Soar," Pittsburgh Post-Gazette, January 15, 2011, available at: <http://www.post-gazette.com/pg/11015/1118218-142.stm>.

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and more costly for SBU to compete for and/or retain top coaching talent.

With regard to your second point, that records documenting salary and benefits of public employees are presumptively open for public inspection, I agree. My inspection of the documents provided to you showed that all salary and benefit information paid by State funds was properly disclosed.

You also asserted that records documenting outside income of public employees are presumptively open for public inspection. I cannot agree. Outside income from non-State funds received by SBU coaches is paid by third parties under their private contracts with the coaches. SBU does not maintain copies of such contracts and has no information on what confidentiality provisions may be present in those contracts. In addition, Public Officers Law § 87(2) (b) permits an agency to "deny access to records or portions thereof that . . . if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article." Public Officers Law § 89(2)(b)(iv) defines an unwarranted invasion of personal privacy to include "information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the ordinary work of such agency."

The New York courts have opined that "what constitutes an unwarranted invasion of personal privacy is measured by what would be offensive and objectionable to a reasonable man of ordinary sensibilities." *Dobranski v. Houper*, 154 A.D.2d 736, 737 (3d Dep't 1989). The court further explained:

This determination requires balancing the competing interests of public access and individual privacy. On the private end of the scale is the expectation of privacy accruing to the individual furnishing the information and the general need to protect against dissemination of personal information relating to that individual. The scale's public end includes the presumption that governmental records are to be available to public

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scrutiny, the judicial reluctance to broaden the narrow exceptions to disclosure, and concerns as to whether the information contained in the document sought to be revealed is a matter of public record. *Id.* at 154 A.D.2d 737-39 (internal citations omitted).

The case law in New York generally adheres to the principle that because tax dollars are used to pay public employees, the public has a right to know certain facts relating to their employment and thus, public employees enjoy a lesser degree of privacy than private employees. However, even public employees are protected by the statutory provisions of the Freedom of Information Law and the Personal Privacy Protection Law and thus retain certain personal privacy interests. With respect to the disclosure of personal matters such as outside income earned under private contracts, in performing the *Dobrinski* balancing of interests, it is error to weigh the requester's interest in obtaining the records against the affected employees' privacy interests. The reasoning was described by one court in this manner:

In performing the required balancing test, however, the court mistakenly weighed petitioner's personal purpose in seeking the remaining photographs against the family's privacy interest and found the scales tilted in favor of petitioner's personal need for access. When the correct factor is substituted for petitioner's personal interest, however, and we consider the *public's interest* in access to the remaining photographs in light of the Supreme Court's observation that they are of no significant interest to the public, the result clearly favors a finding that the exemption applies. *Edwards v. N.Y. State Police*, 44 A.D.3d 1216, 1217 (3d Dep't 2007) (emphasis added).<sup>5</sup>

<sup>5</sup> See also, *Harbatkin v. New York City Dep't of Records & Information Serv.*, 2011 WL 2119554, \*1 (1st Dep't 2011), finding that privacy interests outweighed Petitioner's interest in being able to publish certain materials, even where such materials could not be "fairly characterized as 'not relevant' to the work of the [agency]."

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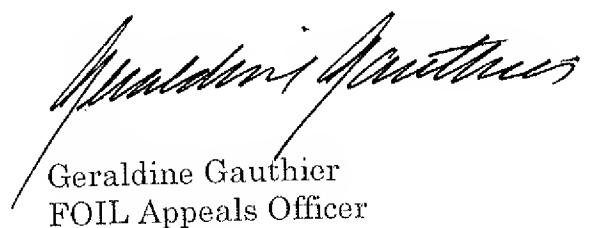
Here, the public has no interest in the redacted material withheld, or in the outside income reports, because none of it involves the expenditure of public funds.

Finally, you assert that SBU waived any right to exempt the documents or any portions thereof from disclosure, on grounds that SBU disclosed coaches' contracts in their entirety in 2007. Public Officers' Law contains no express provision on waiver. However, in a case involving an agency's disclosure of attorney-client and work-product privileged documents, the New York Committee on Open Government opined that while the attorney client and work product privileges were waived by the agency's disclosure, the agency did not waive its right to deny disclosure of the documents or portions thereof under applicable exemptions in the FOIL law, should those same documents be sought in a subsequent FOIL request. (FOIL AO-17713, July 17, 2009).

Here, you are not seeking 2007 coaches' contracts but rather, the coaches' contracts effective in 2012. Thus the documents you seek have not been previously disclosed and I find that SBU properly redacted them in accordance with the provisions of the FOIL law.

For the foregoing reasons, I affirm the decision of SBU's Records Access Officer.

Sincerely,



Geraldine Gauthier  
FOIL Appeals Officer

cc: Douglas Panico  
Robert Freeman, Esq.